

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE

IN THE MATTER OF THE APPLICATION OF)
DELMARVA POWER & LIGHT COMPANY FOR)
APPROVAL OF A VOLUNTARY PROGRAM FOR) PSC DOCKET NO. 17-1094
PLUG IN VEHICLE CHARGING)
(FILED OCTOBER 19, 2017))

ORDER NO. 9270

AND NOW, this 6th day of September 2018, the Delaware Public Service Commission ("Commission") determines and orders the following:

WHEREAS, on October 19, 2017, Delmarva Power & Light Company ("Delmarva" or the "Company") filed an application (the "Application") with the Commission requesting approval of a voluntary program for Plug In Vehicle Charging (the "PIV Program"); and

WHEREAS, in the Application, Delmarva is proposing to implement a voluntary PIV Program, consisting of six (6) separate offerings for PIV charging in Delaware described as follows:

- 1) Residential - with Existing Electric Vehicle Supply Equipment ("EVSE"), providing whole-house time-of-use rates - Schedule "R-PIV";
- 2) Residential - with EVSE, offering a FleetCarma© metering device option;
- 3) Residential - without EVSE - Schedule "PIV," providing Smart Level 2 Equipment Installed and 2nd Meter at reduced cost;
- 4) Multi-Family Dwelling Units - Schedule "SGS ND-PIV" (condominium/apartment buildings) with dedicated on-site parking currently without EVSE, providing Level 2 charging station;
- 5) Public Charging Corridor - Installation of two Direct Current Fast Chargers ("DCFC") - Schedule "MGS-S-PIV" in Delaware; and

6) Public Charging - Neighborhood Installation in Delaware - two
(2) Level 2 EVSE stations - Schedule "MGS-S-PIV"; and

WHEREAS, on February 9, 2018, Delmarva amended its Application, adding a seventh offering to provide funding for electric buses for schools and/or community centers in its service territory; and

WHEREAS, R. Campbell Hay was designated as Hearing Examiner for this matter pursuant to the terms of 26 *Del. C.* § 502 and 29 *Del. C.* ch. 101 to schedule and conduct, upon due notice, such public comment sessions and evidentiary hearings, as may be necessary, to have a full and complete record concerning the justness and reasonableness of the proposed program. Thereafter, Hearing Examiner Hay was to file with the Commission his proposed findings and recommendations. Pursuant to Rule 2.1 of the Commission's Rules of Practice and Procedure, Hearing Examiner Hay was specifically delegated the authority to grant or deny petitions seeking leave to intervene and for admission of counsel *pro hac vice*. In addition, Hearing Examiner Hay was delegated the authority, under 26 *Del. C.* § 102(A), to determine the form and manner of any further public notice in this matter. Thomas D. Walsh is designated Rate Counsel for this matter; and

WHEREAS, Hearing Examiner Hay resigned his position and on February 1, 2018, in Order No. 9183, the Commission designated Senior Hearing Examiner Mark Lawrence for this matter, pursuant to the terms of 26 *Del. C.* § 502 and 29 *Del. C.* ch. 101, to continue the assigned responsibilities in this docket; and

WHEREAS, Petitions to intervene were approved for the Department of Natural Resources and Environmental Control ("DNREC"), the Sierra

Club ("Sierra"), and Caesar Rodney Institute ("CRI"), and the Division of the Public Advocate (the "DPA") filed its Statutory Notice of Intervention; and

WHEREAS, Joshua Berman, Esquire, was granted admission *pro hac vice* on behalf of Sierra; and

WHEREAS, the parties agreed upon a procedural schedule calling for public comments in all three counties and for the conduct of discovery, filing of testimony by the parties, rebuttal testimony if needed, and for conducting of evidentiary hearings on July 11-12, 2018; and

WHEREAS, in a letter dated June 22, 2018, Thomas McGonigle, attorney for Delmarva, notified Senior Hearing Examiner Lawrence that Delmarva's parent company, Exelon, had engaged a consultant earlier in the year to study issues related to electric vehicles in its various jurisdictions. According to the letter, Delmarva was not aware of the precise scope of the study or its particular relevance to Delaware, but had now come to the conclusion that the study (the "Gabel Report") was highly relevant to the consideration of this matter and that the report on the study would be finalized within the following 10-14 days. Mr. McGonigle asked that the evidentiary hearings be postponed and that all parties should be given the opportunity to review the report, seek additional discovery on issues related thereto, and potentially provide additional testimony around the issues raised in the report should they deem it appropriate. After the parties had an opportunity to review the report, the parties would then consult with each other in an effort to reach agreement on an appropriate scheduling order; and

WHEREAS, Senior Hearing Examiner Lawrence held a conference call with the parties on July 3, 2018, to discuss Delmarva's request to postpone the evidentiary hearings. DNREC and Sierra supported Delmarva's request, whereas Staff, the DPA, and CRI opposed the request. Senior Hearing Examiner Lawrence ruled on that conference call that Delmarva could file the Gabel Report and postponed the evidentiary hearings scheduled for July 11-12, 2018; and

WHEREAS, on July 11, 2018, after receiving the Gabel Report on July 6, 2018, Senior Hearing Examiner Lawrence issued Proposed Findings and Recommendations memorializing his ruling that Delmarva could file the Gabel Report and postponing the evidentiary hearings scheduled for July 11-12, 2018, stating that he was simply varying the discovery in the case in the interest of justice on the basis that the Gabel Report gave a detailed analysis of the future of electric vehicles in Delaware which would substantially aid the Commission in deciding the case. Mr. Lawrence stated that no party would be prejudiced and each party would be given time to conduct discovery. Mr. Lawrence stated that the Commission has consistently sought to assemble a complete evidentiary record and, while he disliked hearing delays, he preferred a hearing delay over an obvious incomplete evidentiary record; and

WHEREAS, on July 13, 2018, the DPA and Staff filed a Motion to Stay further activity on this Docket (the "Motion") until the earlier of June 30, 2019, or the date that a statute deregulating electric charging station operators becomes effective, arguing that proposed Senate Bill 188 ("SB 188") would amend the definition of "public utility" to exempt providers of electric vehicle charging stations from regulation as a

public utility; that SB 188 was passed by the Senate unanimously, and there appeared to be no opposition thereto, but the House of Representatives did not bring SB 188 to the floor for a vote; and

WHEREAS, the Motion emphasized that a bill similar to SB 188 would be introduced in the next session of the General Assembly; and

WHEREAS, DPA and Staff argued that it was inconsistent with deregulating the provision of electric charging infrastructure to allow Delmarva to recover the cost of investments in such infrastructure and charging equipment from its captive ratepayers when other unregulated non-utility providers of such infrastructure and charging equipment do not have a guaranteed source of cost recovery for their investments; and

WHEREAS, the DPA and Staff further argued that at its meeting on July 10, 2018, the Commission considered whether to require electric charging station operators to secure a Certificate of Public Convenience and Necessity ("CPCN") and seek rates to be charged to customers, and at that meeting DNREC and Sierra and Tesla urged the Commission to postpone its decision until the end of the next legislative session, and the Commission voted unanimously to postpone its decision, similar to the DPA and Staff's request to stay the current matter; and

WHEREAS, Delmarva, DNREC, and Sierra filed responses opposing the Motion, arguing that there was no inconsistency between exempting owners of electric vehicle charging stations from regulation while yet considering applications such as Delmarva's and also arguing that it was not possible to insure that that the General Assembly would pass legislation similar to SB 188 in its next session and therefore this matter should not be postponed; and

WHEREAS, CRI supported approval of the Motion for Stay; and

WHEREAS, the DPA and Staff also filed Exceptions to the Senior Hearing Examiner's Proposed Findings and Recommendations, arguing that: (1) it was improper for the Senior Hearing Examiner to rely on the Gabel Report because he had not received it until July 6, 2018, yet the teleconference with the parties took place on July 3, 2018, and the July 11, 2018 ruling of the Senior Hearing Examiner was to memorialize the decision reached on July 3, 2018; (2) the Senior Hearing Examiner's ruling was unfair because it did not allow for the filing of new testimony by parties whose previously filed testimony had no opportunity to discuss the Gabel Report; and (3) Delmarva and its parent had previously engaged this consultant and should have waited for the report before filing its application, or should now be required to refile its application, so that all parties have at the very least a fair chance to respond to the Gabel Report. DPA and Staff argued that at a minimum, Delmarva should have told other parties about the Gabel Report far earlier in the case because, as the record confirms, Delmarva submitted data requests to other parties without ever mentioning its having commissioned the Gabel Report. The DPA and Staff's Exceptions urged the Commission not to allow the Gabel Report into evidence and to schedule an evidentiary hearing as soon as possible. Alternatively, DPA and Staff argued the Commission should require that interveners be permitted to file additional testimony addressing the Gabel Report; and

WHEREAS, at its meeting on August 7, 2018, the Commission considered the Motion to Stay, the Exceptions to the Senior Hearing Examiner's Findings and Recommendations, and heard the parties'

arguments. The DPA made it clear that it does not oppose Delmarva providing charging infrastructure and equipment, but rather opposes all ratepayers having to pay for something that will benefit the very few persons owning electric plug in vehicles, and that other sources of payment should be found. The Commission voted to deny the Motion to Stay and to modify the Senior Hearing Examiner's Findings and Recommendations to not only allow discovery concerning the Gabel Report, but to allow all of the intervening parties and Staff to submit new testimony. Chairman Winslow also said he hoped all sources of potential financing of this application would be considered;

**NOW, THEREFORE, IT IS HEREBY ORDERED BY THE AFFIRMATIVE
VOTE OF NOT FEWER THAN THREE COMMISSIONERS:**

1. This matter is hereby returned to the Senior Hearing Examiner.
2. The parties are to consult with each other and agree upon a new procedural schedule which will provide for discovery upon the Gabel Report and submission of surrebuttal testimony by Staff and the Intervening parties.
3. The Commission reserves the jurisdiction and authority to enter such further Orders in this matter as may be deemed necessary or proper.

BY ORDER OF THE COMMISSION:

Chairman

Commissioner

Commissioner

Commissioner

Commissioner

ATTEST:

Secretary